laws by seeking foreign registration eagerly offered by some countries. Confronted with such operations, our courts on occasion have passed beyond the formalities of more or less nominal foreign registration *to enforce against American shipowners* the obligation which our law places upon them." (Italics added for emphasis).

In reaching this conclusion, Justice Jackson cited as authority in his footnotes the case of *Gerradin v. United Fruit Co.*, (2CCA) 60 F (2d) 927, certiorari denied, 287 U. S. 642. In *Gerradin,* the vessel flew the Honduran flag *but was actually owned by a New York corporation.* There was no question in *Gerradin,* but that the vessel was wholly owned by an American citizen corporation. In the case at bar, not only is the owning corporation an alien corporation, but of most importance *eighty (80) percent (the controlling interest) of that corporation's stock was owned by Greek citizens.* (See Appendix p. 15a). There is not a scintilla of evidence to support the Court of Appeals finding that any of the Greek stock owners were United States residents. This point was not once raised in the District Court nor was there ever such a finding by the District Court. Until this most startling decision was rendered, the application of the Jones Act to vessel, regardless of flag, which *were owned or ultimately controlled,* by American citizens made sense. However, *if actual control* is to be disregarded, there is no criteria or rule which can now be applied. Would the decision in *Lauritzen, supra.,* have been otherwise if twenty (20) percent of the stock of the corporate vessel owner had been held by an American citizen? We do not for a moment believe that it would. The basic prin-

ciple totally overlooked by the District Court and the Court below is that only where the vessel is owned by an American corporation, as in *Gerradin, supra.*, or where *all of the stock* of the corporation, as in *Bartholomew v. Universe Tanships, Inc.*, (2CCA), 263 F (2d) 437, cert. denied, 359 U. S. 1000, is owned by American citizens, should the courts apply the Jones Act when the application of the same is based on the allegiance of the owner.

The importance of this question of application of the Jones Act to foreign flag vessels where a minority interest is held by American investors, is self apparent and on this grounds alone a writ should be granted.

II. In awarding double wages to libellant under the facts of the case at bar, the Court below and the District Court's decisions were directly contra to this Court's decision in *McCrea v. United States*, 294 U. S. 23, re-argument denied 294 U. S. 382.

The libellant was discharged from the SS MARGARITIS on April 1, 1958, to the U. S. P. H. S. Hospital at Norfolk, Virginia. On April 2, 1958, the Master of the MARGARITIS, who had joined the MARGARITIS at Bremen seventeen days earlier, compiled what he believed to be an accurate wage account covering the wages due libellant. This wage account covered a period from the commencement of the last voyage on March 13, 1958 to libellant's discharge on April 1, 1958. (See Articles in Appendix). This account was turned over to the vessel's local agent, Messrs. Hasler & Company, who were instructed to pay the libellant forthwith. The vessel's agent thereupon sent someone

to the Marine Hospital to pay the libellant $53.34, the amount computed as due him, and obtained from the libellant a receipt acknowledging payment of all wages due up to and including April 1, 1958 (Appendix p. 20a). On August 21, 1958, libellant gave his deposition de bene ese, at which time respondent's attorneys first learned that libellant claimed he was due wages from a previous voyage and from the Master who left the MARGARITIS at Bremen in March of 1958. No allegation as to wages due from a prior voyage was ever made in libellant's libel. (See libel). The District Court, upon these facts, found that respondent's failure to pay the wages in question before August 21, 1958, was excusable, but that after August 21st respondent had put forward no valid excuse why the wages due for the voyage which ended at Bremen in March 1958 should not be paid. (Appendix p. 21a). Consequently, the District Court awarded libellant double wages from August 22, 1958, until such time as the wages and penalties are paid in full. (Appendix p. 21a).

46 U. S. C. A. 596, commonly known as "the penalty statute," sets forth the circumstances under which a seaman may become entitled to double wages. This statute reads as follows:

> "*The Master or owner of any vessel* making coasting voyages *shall pay to every seaman his wages* within two days after the termination of the agreement under which he was shipped, or at the time such seaman is discharged, whichever first happens; and *in case of vessels making foreign voyages. . . ., with twenty-four hours after the cargo has been discharged, or within four days*

*after the seaman has been discharged, whichever first happens;* . . . Every master or owner who refuses or neglects to make payment in the manner hereinbefore mentioned, without sufficient cause shall pay to the seaman a sum equal to two days' pay for each and every day during which payment is delayed beyond the respective periods, which sum shall be recoverable as wages in any claim made before the Court; . . ." (Italics added for emphasis).

Liability for double wages accrues, if at all, from the end of the period within which payment should have been made. *Liability must be determined by the happening of an event within the period prescribed by the statute.* Consequently, if the failure to pay wages at the time of discharge was excusable, then the mere filing of suit or making demand at a later date cannot from that later date commence the running of any penalties.

A case which is on all fours with the case at bar is the *McCrea v. United States*, 294, U. S. 23. In the *McCrea case*, as in the case at bar, the lower courts found that the failure to pay certain earned wages at the time of the libellant's discharge was "excusable neglect". In *the McCrea case*, supra, the lower court ruled that the libellant was entitled to recover double pay for the number of days intervening after the libellant brought his suit. In the case at bar, the lower court ruled that the libellant was entitled to recover double pay for the number of days intervening after the libellant gave his testimony on August 21, 1958, or more than four (4) months after libellant was discharged from the MARGARITIS. Thus, the lower court in

the case at bar found that from April 1, 1958, the date of libellant's discharge from the MARGARITIS, to August 21, 1958, the date libellant gave his testimony, respondent's failure to pay the disputed wages was excusable.

The law is clear that under such circumstances the court cannot apply the double penalty statute. The remedy is by way of awarding wages plus accrued interest due on the same. As the Supreme Court of the United States said in *the McCrea, supra:*

> "... The liability is conditioned by the statute upon the refusal or neglect to pay wages 'in the manner hereinbefore mentioned without sufficient cause". The quated phrase refers to the specified periods within which the seaman's wages are directed to be paid, and the section thus imposes liability for neglect, without sufficient cause, to pay wages within the prescribed period. Petitioner seeks, by a more liberal interpretation of the words, to impose the liability for such delay in payment, without sufficient cause as may occur at any time after an excusable failure to pay within the prescribed period."

That is exactly what the lower court has sought to do in the case at bar. Finding the failure to pay excusable at the time of libellant's discharge, the court has found further, that some four months later that excusable failure was converted into a wilful failure to pay wages and from that later date imposed upon the respondent the penalty of double wages. However, as the Supreme Court stated continuing in its opinion in *the McCrea case,* supra:

> "This possibility is precluded by the further provision of the section that double wages shall

be paid for each day 'during which payment is delayed beyond the respective periods' within which the payment is to be made. Thus, liability for double wages accrues, if at all, from the end of the period within which payment should have been made. It must be determined by the hoppening of an event within the period, failure to pay wages without sufficient cause."

In the case at bar, the District Court found the failure to pay the disputed wages on April 1, 1958, the date libellant was discharged from respondent's vessel was excusable. This failure, the Court further found was excusable up to August 21, 1958. Accepting these basic findings of the District Court and applying them to the applicable statute relative to double wages, 46 U. S. C. A. 596, it is clear beyond a per adventure that this is not a case in which double wages can apply.

III. Awarding penalties or double wages to a Greek seaman for wages due him by a foreign vessel owner in a foreign port under expired Articles is not contemplated by 46 U. S. C. A. 596. In the case at bar, the libellant, a Greek seaman was allegedly due something in excess of £28 at the termination of Voyage No. 24, which ended at Bremen, Germany, on or about March 12, 1958. At Bremen, on March 13, 1958, a new Master joined the MARGARITIS and new Articles for a new voyage were signed. (See Articles in Appendix). Contrary to the finding of the Circuit Court that these Articles were signed on the high seas, the Articles themselves clearly state that they were signed at Bremen on March 13, 1958. This fact was also found by the District Court (see Supplemental Opinion of

District Court in Appendix, page 16a). Both the District Court and the Court below have attached some significance to the fact that the Articles in question were not validated until the vessel reached New York on April 1st. The obvious reason for this was that undoubtedly New York was the first port reached after the signing of Articles that had a Honduran consul.

Nevertheless, it is admitted, and the District Court so found, that the libellant was paid on April 2, 1958, one day following his discharge to the U. S. P. H. S. Hospital, at Norfolk, the sum of $53.54 (see District Court's original opinion, Appendix p. 9a). This amount the Court found was the wages due libellant from March 13, 1958, the date he last signed Articles in Bremen until April 1, 1958, the date of his discharge for hospitalization at Norfolk. The wages for this voyage were computed by the new Master who had joined the MARGARITIS at Bremen on March 13th and correctly covered the period of this libellant's service under those Articles.

Nevertheless, though libellant was admittedly fully paid at Norfolk on April 2, 1958, all wages due him under the Articles and for the voyage for which he was then signed, the District Court on finding wages due from a prior voyage which terminated at Bremen and under prior Articles, awarded penalties under 46 U. S. C. A. 596. This we respectfully submit the District Court, under the statute in question had no authority to do.

The first sentence of 46 U. S. C. A. 596 confines the wages to be considered to those arising under the

agreement under which the seaman was last shipped. (See 46 U. S. C. A. 596, Appendix p. 26a). The agreement under which this libellant last shipped was the Articles signed at Bremen on March 13, 1958. Admittedly, libellant was paid all wages due him under these Articles and for the voyage which was interrupted at Norfolk on April 1, 1958.

If libellant was due any wages they were due at Bremen, for a prior voyage and under other Articles. For as was stated in *Pacific Mail Steamship Co. v. Schmidt*, 241 U. S. 248 at page 250.

"The statute deals with voyages."

It is respectfully submitted that insofar as foreign shipowners are concerned 46 U. S. C. A. 596 is only applicable where the foreign seaman is discharged in a United States port and wages, due under the Articles that he was working at the time of his discharge in the United States port, are unpaid. This was not the situation in the case at bar.

## CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,
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